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DOCUMENT DE SÉANCE

De:	Présidence
A:	Working Party on Company Law (Sustainability information)
N° doc. prec.:	14268/21
N° Cion doc.:	8132/21
Sujet:	Proposition de DIRECTIVE DU PARLEMENT EUROPÉEN ET DU CONSEIL modifiant les directives 2013/34/UE, 2004/109/CE et 2006/43/CE ainsi que le règlement (UE) n° 537/2014 en ce qui concerne la publication d'informations en matière de durabilité par les entreprises - Note de la Présidence en vue de la réunion du groupe "Droit des sociétés" du 20 janvier 2022

WK 524/2022 INIT

LIMITE

FR

PRÉSIDENTE FRANÇAISE DU CONSEIL DE L'UNION EUROPÉENNE

Note de la Présidence

Groupe Droit des sociétés du 20 Janvier 2022

Proposition de directive relative à la publication d'informations en matière de durabilité par les entreprises

Chers collègues,

Le 13 janvier, lors de notre première réunion du groupe de travail « droit des sociétés » sur la proposition en objet, nous avons continué les discussions sur le texte de compromis présenté par la Présidence slovène le 8 décembre (doc 14268/21) et vous avons présenté des propositions d'ajustement suite à vos commentaires.

Le 20 janvier, nous allons poursuivre ce travail en terminant le tour de table sur les points qui restent à être commentés et en vous proposant des ajustements au texte sur des sujets déjà abordés lors de nos tours de table précédents.

Ce groupe de travail sera organisé en trois parties :

- (I) Fin du tour de table sur le texte de compromis slovène avec un focus sur les aspects suivants : sanctions ; articulation avec les autres initiatives législatives ; délais ; autres commentaires généraux que les délégations souhaiteraient soulever.
- (II) Lecture article par article des ajustements proposés sur les dispositions relatives à l'audit.
- (III) Retour sur les ajustements proposés aux articles 1, 2, 19a, 29 a, 29b, 29c et 29d suite au groupe de travail du 13 janvier.

I – Continuation du tour de table

La Présidence poursuivra le tour de table sur les derniers aspects de la proposition de la présidence slovène qui n'auront pas encore été abordés de manière systématique :

A. Sanctions

Le sujet a été abordé une première fois le 8 décembre. Plusieurs délégations ont demandé des amendements du texte. La présidence demandera aux délégations si elles préfèrent une suppression complète de l'article 51, ou des amendements partiels.

B. Articulation avec d'autres législations ou initiatives législatives

- ESAP : les délégations sont-elles d'accord pour retirer de CSRD les dispositions relatives à la transmission des données de soutenabilité aux organismes officiellement habilités à collecter ces données, pour les réserver aux discussions ESAP ?
- Finance durable : reste-t-il des questions d'articulation après les clarifications du texte de compromis vis-à-vis des autres textes sur la finance verte, et vis-à-vis des législations sectorielles applicables aux entreprises financières (exemples : pilier 3 - reporting CRR/CRD et Solvabilité 2) ?

C. Eventuelles demandes d'ajustement des délais

- Délais prévus pour la transposition par les Etats membres ;
- Délais prévus pour l'adoption par la Commission des actes délégués sur les standards de reporting ;
- Délais prévus pour la mise en œuvre par les entreprises ;
- Délais prévus pour l'adoption par la Commission des standards de vérification ;
- Délais prévus pour le passage à l'assurance raisonnable du *reporting* de durabilité.

II – Examen des ajustements proposés sur l'audit

Faisant suite aux commentaires reçus jusqu'à présent, la Présidence soumettra aux Etats membres les ajustements en annexe, sur les aspects relatifs à l'audit. Les amendements, présentés en annexe, couvrent les révisions apportées à la directive Transparence, à la directive Audit et au règlement Audit, pour ce qui concerne la vérification des informations publiées en matière de durabilité.

III – Suivi du groupe de travail du 13 janvier

A. Traitement des filiales

- Exemption pour les Entités d'intérêt public
- Régime linguistique

B. Définitions et champ d'application

- Intangibles
- Reporting sur la chaîne de valeur

C. Standards de reporting en matière de durabilité

- Processus de consultation en amont de l'adoption des standards

D. Standards applicables aux PME (Articles 19a et 29c)

E. Localisation et format de reporting de durabilité

Annexe

Ajustements au projet de compromis en matière d'audit

Article 1

Amendments to Directive 2013/34/EU

[...]

(10) Article 34 is amended as follows:

(a) in paragraph 1, the second subparagraph is amended as follows:

(i) point (a)(ii) is replaced by the following:

‘whether the management report has been prepared in accordance with the applicable legal requirements, excluding the requirements on sustainability reporting laid down in Article 19a;’;

(ii) the following point (aa) is inserted:

(aa) where applicable, express an opinion based on a limited assurance engagement as regards the compliance of the sustainability reporting with the requirements of this Directive, including the compliance of the sustainability reporting with the reporting standards adopted pursuant to Article 29b or Article 29c, the process carried out by the undertaking to identify the information reported pursuant to those reporting standards, and the compliance with the requirement to mark-up sustainability reporting in accordance with Article 29d, and as regards the compliance with the reporting requirements of Article 8 of Regulation (EU) 2020/852.

(b) paragraph 3 is replaced by the following:

‘3. Member States may allow a different auditor than the one doing the statutory audit of financial statements to express the opinion referred to in paragraph 1, second subparagraph, point (aa).’

3a. Member States may allow an independent assurance services provider to express the opinion referred to in paragraph 1, second subparagraph, point (aa), provided that **such independent assurance services provider** ~~it~~ is subject to requirements that are equivalent ~~with~~ to those set out in Directive 2006/43/EC of the European

Parliament and of the Council¹ as regards the assurance of sustainability reporting as defined in Article 2, point 22 of that Directive, in particular with requirements on:

- i) training and examination, ensuring that independent assurance services providers acquire the necessary expertise on sustainability reporting and the assurance of sustainability reporting;
 - ii) continuing education;
 - iii) quality assurance systems;
 - iv) professional ethics, independence and objectivity, confidentiality and professional secrecy;
 - v) appointment and dismissal; and
 - vi) investigations and sanctions ~~supervision~~.
- vi) sanctions

Where an independent assurance services provider gives the opinion referred to in paragraph 1, second subparagraph, point (aa), this opinion shall be prepared in accordance with Article 28a of Directive 2006/43/EC.

Member States shall ensure that independent assurance services providers accredited before 1 January 2024 for the assurance of sustainability reporting in accordance with Regulation (EC) No 765/2008, are not subject to the training and examination requirements referred to in the first subparagraph, point i).

Member States shall ensure that independent assurance services providers that on 1 January 2024 are undergoing the accreditation process in accordance with the relevant national requirements are not subject to the training and examination ~~new accreditation~~ requirements referred to in the first subparagraph, point (i) as regards the assurance of sustainability reporting provided they finish the process by 1 January 2026.

¹ Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (*OJ L 157, 9.6.2006, p. 87*).

Member States shall ensure that the independent assurance services providers referred to in the third and fourth subparagraphs acquire the necessary knowledge ~~in~~ on sustainability reporting and the assurance of sustainability reporting via the continuing education requirement referred to in the first subparagraph, point ii).

If a Member State makes use of the option to allow an independent assurance services provider, it shall also allow a different auditor than the one doing the statutory audit of financial statements to express the opinion referred to in paragraph 1, second subparagraph, point (aa). ’

(ba) The following paragraph is inserted:

‘3aa. When the Commission adopts standards for reasonable assurance according to Article 26a(2), second subparagraph of Directive 2006/43/EU the opinion referred to in Article 34(1), second subparagraph, point (aa) shall be based on a reasonable assurance engagement.’;

(11) Article 49 is amended as follows:

(a) paragraphs 2 and 3 are replaced by the following:

- ‘2. The power to adopt delegated acts referred to in Article 1(2), Article 3(13), Article 46(2), Article 29b and Article 29c shall be conferred on the Commission for an indeterminate period of time.
3. The delegation of power referred to in Article 1(2), Article 3(13), Article 46(2), Article 29b and Article 29c may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of that decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.’;

[...]

Article 2

Amendments to Directive 2004/109/EC

Directive 2004/109/EC is amended as follows:

(1) in Article 2(1) the following point (r) is added:

‘(r) ‘sustainability reporting’ means sustainability reporting as defined in Article 2(18) of Directive 2013/34/EU of the European Parliament and of the Council²’;

(2) Article 4 is amended as follows:

(a) in paragraph 2, point (c) is replaced by the following:

‘(c) statements made by the persons responsible within the issuer, whose names and functions shall be clearly indicated, to the effect that, to the best of their knowledge, the financial statements prepared in accordance with the applicable set of accounting standards give a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer and the undertakings included in the consolidation taken as a whole and that the management report includes a fair review of the development and performance of the business and the position of the issuer and the undertakings included in the consolidation taken as a whole, together with a description of the principal risks and uncertainties that they face and, where ~~appropriate~~applicable, that it is prepared in accordance with sustainability reporting standards referred to in Articles 29b and 29c of Directive 2013/34/EU.’;

(b) paragraphs 4 and 5 are replaced by the following:

‘4. The financial statements shall be audited in accordance with Article 34 of Directive 2013/34/EU and Article 28 of Directive 2006/43/EC.

The audit report, signed by the person or persons responsible for carrying out the work set out in paragraphs 1 and 2 of Article 34 of Directive 2013/34/EU shall be disclosed in full to the public together with the annual financial report.

Where applicable, the assurance report on sustainability reporting referred to in Article 28a of Directive 2006/43/EC shall be disclosed in full to the public together with the annual financial report.

5. The management report shall be drawn up in accordance with Articles 19, 19a, 29d(1) and 20 of Directive 2013/34/EU, provided that the size thresholds prescribed in those articles are met.

² Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

Where the issuer is required to prepare consolidated accounts, the consolidated management report shall be drawn up in accordance with Articles 29d(2), 29 and 29a of Directive 2013/34/EU, provided that the size thresholds prescribed in those articles are met.’;

[...]

Article 3

Amendments to Directive 2006/43/EC

Directive 2006/43/EC is amended as follows:

- (1) Article 1 is replaced by the following:

‘Article 1

Subject matter

This Directive establishes rules concerning the statutory audit of annual and consolidated accounts and the assurance of annual and consolidated sustainability reporting.’;

- (2) Article 2 is amended as follows:

- (a) points 2 and 3 are replaced by the following:

‘2. ‘statutory auditor’ means a natural person who is approved in accordance with this Directive by the competent authorities of a Member State to carry out statutory audits and, where applicable, assurance engagements of sustainability reporting;

‘3. ‘audit firm’ means a legal person or any other entity, regardless of its legal form, that is approved in accordance with this Directive by the competent authorities of a Member State to carry out statutory audits and, where applicable, assurance engagements of sustainability reporting;

‘6. ‘group auditor’ means the statutory auditor(s) or audit firm(s) carrying out the statutory audit of consolidated accounts or, where applicable, the assurance engagements of sustainability reporting;’

- (aa) The following point 16a is added

‘16 a. ‘key sustainability partner(s)’ means:

- (a) the statutory auditor(s) designated by an audit firm for a particular assurance engagement of sustainability reporting as being primarily responsible for

carrying out the assurance engagement of sustainability reporting on behalf of the audit firm; or

- (b) in the case of the assurance of consolidated sustainability reportinga group audit, at least the statutory auditor(s) designated by an audit firm as being primarily responsible for carrying out the assurance engagement of sustainability reporting at the level of the group and the statutory auditor(s) designated as being primarily responsible at the level of material subsidiaries; or
- (c) the statutory auditor(s) who sign(s) the opinion on the assurance of sustainability reporting referred to in Article 34(1), second subparagraph, point (aa) and Article 34(2) of Directive 2013/34/EU in the audit report;'

(b) the following points 21 and 22 are added:

- '21. 'sustainability reporting' means sustainability reporting as defined in Article 2, point (18), of Directive 2013/34/EU;
- 22. 'assurance (engagement) of sustainability reporting' means the opinion expressed by the statutory auditor or audit firm in accordance with Article 34(1), second subparagraph, point (aa) and Article 34(2) of Directive 2013/34/EU .';

(3) Article 6 is replaced by the following:

'Article 6

Educational qualifications

1. Without prejudice to Article 11, a natural person may be approved to carry out a statutory audit only after having attained university entrance or equivalent level, then completed a course of theoretical instruction, undergone practical training and passed an examination of professional competence of university final or equivalent examination level, organised or recognised by the Member State concerned.
2. A natural person may in addition be approved to carry out ~~an~~ assurance engagements of sustainability reporting when the additional specific requirements of Articles 7(2), 10(1) second subparagraph and 14(2), fourth subparagraph of this Directive are met.
3. The competent authorities referred to in Article 32 shall cooperate with each other with a view to achieving a convergence of the requirements set out in this Article. When engaging in such cooperation, those competent authorities shall take into account

developments in auditing and in the audit profession and, in particular, convergence that has already been achieved by the profession. They shall cooperate with the Committee of European Auditing Oversight Bodies (CEAOB) and the competent authorities referred to in Article 20 of Regulation (EU) No 537/2014 in so far as such convergence relates to the statutory audit and assurance of sustainability reporting of public-interest entities.’;

(3)a in Article 7, paragraph 2 is added:

Examination of professional competence

- ‘2. In order for the statutory auditor to also be approved to carry out assurance engagements of sustainability reporting, the examination of professional competence referred to in Article 6 shall guarantee the necessary level of theoretical knowledge of subjects relevant to the assurance of sustainability reporting and the ability to apply such knowledge in practice. Part at least of that examination shall be written.’

(4) in Article 8, paragraph 3 is added:

- ‘3. In order for the statutory auditor to also be approved to carry out assurance engagements of sustainability reporting, it shall also cover at least the following subjects:

a) legal requirements and **reporting** standards relating to the preparation of annual and consolidated sustainability reporting;

~~b) sustainability reporting standards;~~

c) sustainability analysis;

d) due diligence processes with regard to sustainability matters;

~~e) sustainability assurance standards as referred to in Article 26a;~~

f) legal requirements **and -assurance standards for sustainability reporting referred to in Article 26(a)** and professional standards relating to the assurance of sustainability reporting and statutory auditors.’;

(5) in Article 10, paragraph 1 **is replaced by**, the following ~~subparagraph is added~~:

- ‘1. In order for the statutory auditor to also be approved to carry out assurance engagements of sustainability reporting, at least one third of such practical training shall be in the assurance of annual and consolidated sustainability reporting or other sustainability related services’

(6a) Article 12 is replaced by the following:

‘Article 12

Combination of practical training and theoretical instruction

1. Member States may provide that periods of theoretical instruction in the fields referred to in Article 8, paragraphs 1 and 2, shall count towards the periods of professional activity referred to in Article 11, provided that such instruction is attested by an examination recognised by the State. Such instruction shall not last less than one year, nor may it reduce the period of professional activity by more than four years.
2. The period of professional activity and practical training shall not be shorter than the course of theoretical instruction together with the practical training required in Article 10(1), first subparagraph.’

(7) in Article 14, paragraph 2, the following subparagraph is added

‘In order for the statutory auditor to also be approved to carry out assurance engagements of sustainability reporting, the aptitude test referred to in the first subparagraph shall cover the statutory auditor's adequate knowledge of the laws and regulations of that host Member State in so far as it is relevant to the assurance of sustainability reporting.’;

(8) the following Article 14a is inserted:

‘Article 14a

Statutory auditors approved or recognised before 1 January 2024 and ~~statutory auditors~~ persons undergoing ~~their~~ the approval process for statutory auditors on 1 January 2024

Member States shall ensure that statutory auditors that are approved or recognised to carry out statutory audits before 1 January 2024 are not subject to the requirements of Articles 7(2), 10(1) second subparagraph and 14(2), fourth subparagraph 4 of this Directive.

Member States shall ensure that ~~statutory auditors~~persons that are undergoing the approval process foreseen in Articles 6 to 14 on 1 January 2024, are not subject to the requirements of Articles 7(2), 10(1), second subparagraph and 14(2), fourth subparagraph of this Directive, provided they finish the process by 1 January 2026.

Member States shall ensure that statutory auditors approved before 1 January 2026 who want to carry out assurance engagements of sustainability reporting, acquire the necessary knowledge oin sustainability reporting and the assurance of sustainability reporting via the

continuing education requirement of Article 13, including on the subjects listed in Article 8(3).’;

(9) Article 24b is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Member States shall ensure that, when the statutory audit is carried out by an audit firm, that audit firm designates at least one key audit partner. The audit firm shall provide the key audit partner(s) with sufficient resources and with personnel that have the necessary competence and capabilities to carry out his, her or its duties appropriately.

Member States shall ensure that, when the assurance of sustainability reporting is carried out by an audit firm, that audit firm designates at least one key sustainability partner, who can be (one of) the key audit partner(s). The audit firm shall provide the key sustainability partner(s) with sufficient resources and with personnel that have the necessary competence and capabilities to carry out his, her or its duties appropriately.

Securing audit quality, independence and competence shall be the main criteria when the audit firm selects the key audit partner(s) and, where applicable, the key sustainability partner(s) to be designated. The key audit partner(s) shall be actively involved in the carrying-out of the statutory audit. The key sustainability partner shall be actively involved in the carrying-out of the assurance of sustainability reporting.’;

(b) the following paragraph 2a is inserted:

‘2a. When carrying out the assurance of sustainability reporting, the statutory auditor shall devote sufficient time to the engagement and shall assign sufficient resources to enable him or her to carry out his or her duties appropriately.’;

(c) in paragraph 4, points (b) and (c) ~~is~~ are replaced by the following:

‘(b) in the case of an audit firm, the name(s) of the key audit partner(s) and, where applicable, the name(s) of the key sustainability partner(s);’

‘(c) the fees charged for the statutory audit, for the assurance of sustainability reporting and the fees charged for other services in any financial year.’;

~~(d) paragraph 5 is replaced by the following:~~

~~‘5. A statutory auditor or an audit firm shall create an audit file for each statutory audit.’~~

~~The statutory auditor or the audit firm shall document at least the data recorded pursuant to Article 22b(1) of this Directive, and, where applicable, Articles 6 to 8 of Regulation (EU) No 537/2014.~~

~~The statutory auditor or the audit firm shall retain any other data and documents that are of importance in support of the report referred to in Articles 28 of this Directive and, where applicable, Articles 10 and 11 of Regulation (EU) No 537/2014 and for monitoring compliance with this Directive and other applicable legal requirements.~~

~~The audit file shall be closed no later than 60 days after the date of signature of the audit report referred to in Article 28 of this Directive and, where applicable, Article 10 of Regulation (EU) No 537/2014.’;~~

(e) paragraph 5a is added:

‘5a. A statutory auditor or an audit firm shall create an assurance file for each assurance engagement of sustainability reporting.

The statutory auditor or the audit firm shall document at least the data recorded pursuant to Article 22b ~~and 25b~~ as regards the assurance of sustainability reporting.

The statutory auditor or the audit firm shall retain any data and documents that are of importance in support of the report referred to in Article 28a of this Directive and for monitoring compliance with this Directive and other applicable legal requirements as regards the assurance of sustainability reporting.

The assurance file shall be closed no later than 60 days after the date of signature of the assurance report referred to in Article 28a of this Directive;

Where the same statutory auditor carries out the statutory audit of annual financial statements and the assurance of sustainability reporting, the information of the assurance file may be included in the audit file.’;

(f) paragraph 6 is replaced by the following:

‘The statutory auditor or the audit firm shall keep records of any complaints made in writing about the performance of the statutory audits and the assurance engagements of sustainability reporting carried out.’

(10) Article 25 is replaced by the following:

‘Article 25

Audit and assurance fees

Member States shall ensure that adequate rules are in place which provide that fees for statutory audits and the assurance of sustainability reporting:

- (a) are not influenced or determined by the provision of additional services to the audited entity **being subject to statutory audit or assurance of sustainability reporting**;
- (b) cannot be based on any form of contingency.’;

(11) the following Article 25b is inserted:

‘Article 25b

Professional Ethics and Scepticism, Independence, Objectivity, Confidentiality and Professional Secrecy as regards the assurance of sustainability reporting

The requirements of Articles 21 to 24a as regards the statutory audit of financial statements shall apply mutatis mutandis to the assurance of sustainability reporting.’;

(12) the following Article 26a is inserted:

‘Article 26a

Assurance standards for sustainability reporting

1. Member States shall require statutory auditors and audit firms to carry out the assurance of sustainability reporting in compliance with assurance standards adopted by the Commission in accordance with paragraph 2.

Member States may apply national assurance standards, procedures or requirements as long as the Commission has not adopted an assurance standard covering the same subject-matter.

Member States shall communicate the assurance procedures or requirements to the Commission at least three months before their entry into force.

~~The CEAOB referred to in Article 30 of Directive 2004/109/EC shall adopt guidelines to set out the procedures that the auditor shall perform in order to draw its conclusions on the assurance of sustainability reporting until the Commission adopts an assurance standard covering the same subject-matter.~~

3. The Commission shall be empowered to adopt, by means of delegated acts in accordance with Article 48a, the assurance standards referred to in paragraph 1 in order to set out the procedures that the auditor shall perform in order to draw its conclusions on the assurance of sustainability reporting, including engagement planning, risk consideration and response to risks and type of conclusions to be included in the audit report.

The Commission shall adopt assurance standards for reasonable assurance no later than [7 years after the entry into force of the CSRD] following an impact assessment.

The Commission may adopt the assurance standards only where they:

- (a) have been developed with proper due process, public oversight and transparency;
- (b) contribute a high level of credibility and quality to the annual or consolidated sustainability reporting;
- (c) are conducive to the Union public good;²

(d) do not amend any of the requirements of this Directive or supplement any of its requirements apart from those set out in Article 25b and Articles 27a and 28a.'

4. ²; [Moved to Article 34 AD]

~~4.a — In accordance with Article 30(7), point (b) of Regulation (EU) No 537/2014 of the European Parliament and of the Council, the CEAOB shall provide expert advice to the Commission at its request on issues related to the implementation of this Article.'~~

(13) the following Article 27a is inserted:

‘Article 27a

Assurance of consolidated sustainability reporting

~~The requirements of Article 27 as regards the audit of consolidated financial statements shall apply where applicable *mutatis mutandis* to the assurance of consolidated sustainability reporting.'~~

1. Member States shall ensure that in the case of an assurance engagement of consolidated sustainability reporting of a group of undertakings:
- (a) in relation to the consolidated sustainability reporting, the group auditor bears the full responsibility for the assurance report referred to in Article 28a of this Directive;

- (b) the group auditor evaluates the assurance work performed by any, third-country auditor(s) or statutory auditor(s) and third-country audit entity(ies), or audit firm(s) for the purpose of ~~the group audit~~ assurance engagement of consolidated sustainability reporting, and documents the nature, timing and extent of the work performed by those auditors, including, where applicable, the group auditor's review of relevant parts of those auditors' assurance documentation;
- (c) the group auditor reviews the assurance work performed by third-country auditor(s) or statutory auditor(s) and third-country audit entity(ies) or audit firm(s) for the purpose of the group assurance engagement of consolidated sustainability reporting and documents it.

The documentation retained by the group auditor shall be such as to enable the relevant competent authority to review the work of the group auditor.

For the purposes of point (c) of the first subparagraph of this paragraph, the group auditor shall request the agreement of the third-country auditor(s), statutory auditor(s), third-country audit entity(ies) or audit firm(s) concerned to the transfer of relevant documentation during the conduct of the assurance engagement of consolidated sustainability reporting, as a condition of the reliance by the group auditor on the work of those third-country auditor(s), statutory auditor(s), third-country audit entity(ies) or audit firm(s).

2. Where the group auditor is unable to comply with point (c) of the first subparagraph of paragraph 1, he, she or it shall take appropriate measures and inform the relevant competent authority.

Such measures shall, as appropriate, include carrying out additional assurance work, either directly or by outsourcing such tasks, in the relevant subsidiary.

3. Where the group auditor is subject to a quality assurance review or an investigation concerning the assurance engagement of consolidated sustainability reporting of a group of undertakings, the group auditor shall, when requested, make available to the competent authority the relevant documentation he, she or it retains concerning the assurance work performed by the respective third-country auditor(s), statutory auditor(s), third-country audit entity(ies) or audit firm(s) for the purpose of the group audit, including any working papers relevant to the group assurance engagement of consolidated sustainability reporting.

The competent authority may request additional documentation on the assurance work performed by any statutory auditor(s) or audit firm(s) for the purpose of the assurance engagement of consolidated sustainability reporting ~~group audit~~ from the relevant competent authorities pursuant to Article 36.

Where the assurance of sustainability reporting of a parent undertaking or a subsidiary undertaking of a group of undertakings is carried out by an auditor or auditor(s) or an audit entity(ies) from a third country, the competent authority may request additional documentation on the assurance work performed by any third-country auditor(s) or third country audit entity(ies) from the relevant competent authorities from third countries through the working arrangements ~~referred to in Article 47~~.

By way of derogation from the third subparagraph, where, an auditor or auditors or an audit entity or entities from a third country that has no working arrangements ~~as referred to in Article 47~~, carried out the assurance of sustainability reporting of a parent undertaking or a subsidiary undertaking of a group of undertakings, the group auditor shall, when requested, also be responsible for ensuring proper delivery of the additional documentation of the assurance work performed by such ~~third-country~~ auditor(s) or audit entity(ies), including the working papers relevant to the ~~group~~ assurance engagement of consolidated sustainability reporting. In order to ensure such delivery, the group auditor shall retain a copy of such documentation, or alternatively agree with the third-country auditor(s) or audit entity(ies) that he, she or it is to be given unrestricted access to such documentation upon request, or take any other appropriate action. Where assurance working papers cannot, for legal or other reasons, be passed from a third country to the group auditor, the documentation retained by the group auditor shall include evidence that he or she has undertaken the appropriate procedures in order to gain access to the audit documentation, and in the case of impediments other than legal ones arising from the legislation of the third country concerned, evidence supporting the existence of such impediments.’;

(14) In Article 28, paragraph 2, point (e) is replaced by the following

- ‘(e) include an opinion and statement, both of which shall be based on the work undertaken in the course of the audit, referred to in ~~to in~~ Article 34(1), second subparagraph, points (a) and (b) of Directive 2013/34/EU’

_(14a)

Article 28a is added:

‘Article 28a

Assurance report on sustainability reporting

1. The statutory auditor(s) or the audit firm(s) shall present the results of the assurance of sustainability reporting in an assurance report on sustainability reporting. The report shall be prepared in accordance with the requirements of assurance standards adopted by the Commission or by Member States until the Commission adopts the assurance standards ~~where applicable, the guidelines prepared by the CEAOB, as~~ referred to in Article 26a.
2. The assurance report on sustainability reporting shall be in writing and shall:
 - (a) identify the entity whose annual or consolidated sustainability reporting are the subject of the assurance engagement;
 - (b) specify the annual or consolidated sustainability reporting and the date and period they cover; and identify the sustainability reporting framework that has been applied in their preparation;
 - (c) include a description of the scope of the assurance of sustainability reporting which shall, as a minimum, identify the assurance standards in accordance with which the assurance of sustainability reporting was conducted;
 - (d) Include the opinion based on the work undertaken in the course of the assurance of sustainability reporting referred to in Article 34~~a~~(1), second subparagraph, point (aa) of Directive 2013/34/EU.
3. Where the assurance on sustainability reporting was carried out by more than one statutory auditor or audit firm, the statutory auditor(s) or the audit firm(s) shall agree on the results of the assurance engagement on sustainability reporting and submit a joint report and opinion. In the case of disagreement, each statutory auditor or audit firm shall submit his, her or its opinion in a separate paragraph of the assurance report on sustainability reporting and shall state the reason for the disagreement.
4. The assurance report on sustainability reporting shall be signed and dated by the statutory auditor. Where an audit firm carries out the assurance of sustainability reporting, the assurance report on sustainability reporting shall bear the signature

of at least the statutory auditor(s) carrying out the assurance of sustainability reporting on behalf of the audit firm. Where more than one statutory auditor or audit firm have been simultaneously engaged, the assurance report on sustainability reporting shall be signed by all statutory auditors or at least by the statutory auditors carrying out the assurance of sustainability reporting on behalf of every audit firm. In exceptional circumstances Member States may provide that such signature(s) need not be disclosed to the public if such disclosure could lead to an imminent and significant threat to the personal security of any person.

In any event, the name(s) of the person(s) involved shall be known to the relevant competent authorities.

5. Where the same statutory auditor carries out the statutory audit of annual financial statements and the assurance of sustainability reporting, the assurance report may be included as a separate section of information required in paragraphs 1 and 2 may be presented in the audit report.
6. The report of the statutory auditor or the audit firm on the consolidated sustainability reporting shall comply with the requirements set out in paragraphs 1 to 5.'

(15) Article 29 is amended as follows:

- (a) in paragraph 1, point (d) is replaced by the following:

‘(d) the persons who carry out quality assurance reviews shall have appropriate professional education and relevant experience in statutory audit and financial reporting and, where applicable appropriate, in the assurance of sustainability reporting and sustainability reporting or other sustainability related services combined with specific training on quality assurance reviews;’;

- (aa) in paragraph 1, point (f) is replaced by the following:

‘(f) the scope of the quality assurance review, supported by adequate testing of selected audit files and, where applicable appropriate-assurance files, shall include an assessment of compliance with applicable auditing standards and, where applicable appropriate, assurance standards and independence requirements, of the quantity and quality of resources spent, of the audit fees and fees for the assurance of sustainability reporting information fees and

assurance fees charged and of the internal quality control system of the audit firm;’

(b) in paragraph 1, point (h) is replaced by the following:

‘(h) quality assurance reviews shall take place on the basis of an analysis of the risk and, in the case of statutory auditors and audit firms carrying out statutory audits as defined in Article 2, point (1)(a), and, where applicable, carrying out assurance engagements of sustainability reporting, at least every six years;’;

(c) in paragraph 2, point (a) is replaced by the following:

‘(a) reviewers shall have appropriate professional education and relevant experience in statutory audit and financial reporting and, where applicable ~~appropriate~~, in the assurance of sustainability reporting and sustainability reporting combined with specific training on quality assurance reviews;’;

(15a) in Article 30, paragraphs 1 and 2 are replaced by the following:

- ‘1. Member States shall ensure that there are effective systems of investigations and sanctions to detect, correct and prevent inadequate execution of the statutory audit and the assurance of sustainability reporting.
2. Without prejudice to Member States' civil liability regimes, Member States shall provide for effective, proportionate and dissuasive sanctions in respect of statutory auditors and audit firms, where statutory audits and assurance engagements of sustainability reporting are not carried out in conformity with the provisions adopted in the implementation of this Directive, and, where applicable, Regulation (EU) No 537/2014.

Member States may decide not to lay down rules for administrative sanctions for infringements which are already subject to national criminal law. In that event, they shall communicate to the Commission the relevant criminal law provisions.’

(15aa) in Article 30a, paragraph 1, point (cc) is inserted:

‘(cc) a temporary prohibition, up to three years’ duration, banning the statutory auditor, the audit firm or the key assurance partner from carrying out the assurance of sustainability reporting and/or signing assurance reports.’

(15b) in Article 30a, paragraph 1, point (dd) is inserted:

‘(dd) a declaration that the assurance report does not meet the requirements of Article 28a of this Directive;’

Investigations and Sanctions as regards the Assurance of Sustainability Reporting

(16a) Article 32 is amendment as follows:

- a) in paragraph 3, subparagraph 1 is replaced by the following:
 - ‘3. The competent authority shall be governed by non-practitioners who are knowledgeable in the areas relevant to statutory audit, and where applicable, to the assurance of sustainability reporting. They shall be selected in accordance with an independent and transparent nomination procedure.’
- b) paragraph 4, point b is replaced by the following:
 - (b) the adoption of standards on professional ethics, internal quality control of audit firms, auditing and the assurance of sustainability reporting, except where those standards are adopted or approved by other Member State authorities;’

(17) the following Article 36(a) is inserted:

‘Article 36a

Regulatory Arrangements between Member States as regards the assurance of sustainability reporting

The requirements of Articles 34 and 36 as regards the statutory audit of financial statements shall apply *mutatis mutandis* to the assurance of sustainability reporting.’;

In Article 37, paragraphs 1 and 2, the second subparagraph is inserted:

‘The provisions of the first subparagraph shall apply to the appointment of the statutory auditor or audit firm for the purpose of assurance of sustainability reporting.’

(18a) in Article 37, paragraph 3 is replaced by the following:

- ‘3. Any contractual clause restricting the choice by the general meeting of shareholders or members of the audited entity pursuant to paragraph 1 to certain categories or lists of statutory auditors or audit firms as regards the appointment of a particular statutory auditor or audit firm to carry out the statutory audit and, where applicable, the assurance of sustainability reporting of that entity shall be prohibited. Any such existing clauses shall be null and void.’

(18b) in Article 38, paragraph 1 is replaced by the following:

- ‘1. Member States shall ensure that statutory auditors or audit firms may be dismissed only where there are proper grounds. Divergence of opinions on accounting treatments, audit

procedures or where applicable on sustainability reporting or assurance procedures shall not be proper grounds for dismissal.’

(18c) In Article 38, paragraph 2, the second subparagraph is inserted:

‘The information obligation referred to in the first subparagraph shall also apply to the assurance engagements of sustainability reporting.’

(19) in Article 39, paragraph 6, points (a) to (e) are replaced by the following:

- ‘(a) inform the administrative or supervisory body of the audited entity of the outcome of the statutory audit and, **where applicable**, of the outcome of the assurance of sustainability reporting and explain how the statutory audit and the assurance of sustainability reporting contributed to the integrity of financial and sustainability reporting respectively, and what the role of the audit committee was in that process;
- (b) monitor the financial and, **where applicable**, sustainability reporting process, including the digital reporting process referred to in Article 29d of Directive 2013/34/EU and the process carried out by the undertaking to identify the information reported according to the standards adopted pursuant to Article 29b of Directive 2013/34/EU, and submit recommendations or proposals to ensure its integrity;
- (c) monitor the effectiveness of the undertaking's internal quality control and risk management systems and, where applicable, its internal audit, regarding the financial and, **where applicable**, sustainability reporting of the audited entity, including its digital reporting as referred to in Article 29d of Directive 2013/34/EU, without breaching its independence;’
- (d) monitor the statutory audit of the annual and consolidated financial statements and, **where applicable**, the assurance of the annual and consolidated sustainability reporting, in particular, its performance, taking into account any findings and conclusions by the competent authority pursuant to Article 26(6) of Regulation (EU) No 537/2014;
- (e) review and monitor the independence of the statutory auditors or the audit firms in accordance with Articles 22, 22a, 22b, 24a, 24b and 25b of this Directive and Article 6 of Regulation (EU) No 537/2014, and in particular the appropriateness of the provision of non-audit services to the audited entity in accordance with Article 5 of that Regulation;’;

(20) Article 45 is amended as follows:

- (a) paragraph 1 is replaced by the following:

‘1. The competent authorities of a Member State shall, in accordance with Articles 15, 16 and 17, register every third-country auditor and audit entity, where that third-country auditor or audit entity provides an audit report concerning the annual or consolidated financial statements and, where applicable, an assurance report concerning annual or consolidated sustainability reporting of an undertaking incorporated outside the Union whose transferable securities are admitted to trading on a regulated market of that Member State within the meaning of Article 4(1), point (14), of Directive 2004/39/EC, except where the undertaking in question exclusively issues outstanding debt securities for which one of the following applies:

- (a) those securities have been admitted to trading on a regulated market in a Member State within the meaning of Article 2(1), point (c), of Directive 2004/109/EC of the European Parliament and of the Council³ prior to 31 December 2010 and the denomination per unit of which is, at the date of issue, at least EUR 50 000 or, in the case of debt securities denominated in another currency, equivalent, at the date of issue, to at least EUR 50 000;
- (b) those securities are admitted to trading on a regulated market in a Member State within the meaning of Article 2(1), point (c), of Directive 2004/109/EC from 31 December 2010 and the denomination per unit of which is, at the date of issue, at least EUR 100 000 or, in case of debt securities denominated in another currency, equivalent, at the date of issue, to at least EUR 100 000.’;

(b) in paragraph 5, the following point (dd) is inserted:

‘(dd) the assurance of the annual or consolidated sustainability reporting referred to in paragraph 1 are carried out in accordance with assurance standards as referred to in Article 26a, as well as the requirements laid down in Articles 22, 22b, 25 and 25b, or with equivalent standards and requirements;’;

(c) paragraph 5a is replaced by the following:

³ Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).’;

‘5a. A Member State may register a third-country auditor only if he or she meets the requirements set out in paragraph 5, points (c), (d), (dd) and (e).’;

(ca) paragraph 6 is replaced by the following:

‘6. In order to ensure uniform conditions of application of points (d) and (dd) of paragraph 5 of this Article, the Commission shall be empowered to decide upon the equivalence referred to therein by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2). Member States may assess the equivalence referred to in points (d) and (dd) of paragraph 5 of this Article as long as the Commission has not taken any such decision.

The Commission shall be empowered to adopt delegated acts in accordance with Article 48a for the purpose of establishing the general equivalence criteria to be used in assessing whether the audits of the financial statements and, where applicable, the assurance of sustainability reporting referred to in paragraph 1 of this Article are carried out in accordance with international auditing standards as referred to in Article 26 and with assurance standards as referred to in Article 26a, respectively, and with the requirements laid down in Articles 22, 24 and 25. Such criteria, which are applicable to all third countries, shall be used by Member States when assessing equivalence at national level.’.

(21) Article 48a is amended as follows:

(a) in paragraph 2 the following subparagraph is added:

‘The power to adopt delegated acts referred to in Article 26a(2) shall be conferred on the Commission for an indeterminate period of time.’;(b) paragraph 3 is replaced by the following:

‘3. The delegation of power referred to in Articles 26(3), 26a(2), 45(6), 46(2) and 47(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.’;

(c) paragraph 5 is replaced by the following:

‘5. A delegated act adopted pursuant to Articles 26(3), 26a(2), 45(6), 46(2) and 47(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of four months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.’.

Article 4

Amendments to Regulation (EU) No 537/2014

Regulation (EU) No 537/2014 is amended as follows:

(1) Article 4 is amended as follows:

(a) the title is replaced by the following:

‘Article 4

Audit fees and fees from for the assurance of sustainability reporting’

(b) paragraph 1 is replaced by the following:

Fees for the provision of statutory audits and the assurance of sustainability reporting to public-interest entities shall not be contingent fees.

Without prejudice to Article 25 of Directive 2006/43/EC, for the purposes of the first subparagraph, contingent fees mean fees calculated on a predetermined basis relating to the outcome or result of a transaction or the result of the work performed. Fees shall not be regarded as being contingent if a court or a competent authority has established them.’

(c) in paragraph 2, second subparagraph is replaced by the following:

‘For the purposes of the limits specified in the first subparagraph, assurance engagements of sustainability reporting and non-audit services, other than those referred to in Article 5(1), required by Union or national legislation, shall be excluded.’

(2) in Article 5, paragraph 4, second subparagraph is inserted:

‘The approval of the audit committee referred to in the first subparagraph shall not be needed for the provision of assurance engagements of sustainability reporting.’;

(2)a the following Article 5a is inserted

‘Article 5a

Prohibited non-audit services where the statutory auditor carries out the assurance of sustainability reporting

1. A statutory auditor or an audit firm carrying out the assurance of sustainability reporting of a public-interest entity, or any member of the network to which the statutory auditor or the audit firm belongs, shall not directly or indirectly provide to the audited entity, to its parent undertaking or to its controlled undertakings within the Union consulting services for the preparation of sustainability reporting in:
 - (a) the period between the beginning of the period audited and the issuing of the audit report; ~~and~~
 - (b) ~~the financial year immediately preceding the period referred to in point (a) in relation to the services listed in point (e) of the second subparagraph of article 5.~~
2. A statutory auditor or an audit firm carrying out assurance engagements of sustainability reporting of public-interest entities and, where the statutory auditor or the audit firm belongs to a network, any member of such network, may provide to the audited entity subject to assurance of sustainability reporting, to its parent undertaking or to its controlled undertakings other non-audit services other than except the prohibited non-audit services
3. When a member of a network to which the statutory auditor or the audit firm carrying out an assurance engagement of sustainability reporting of a public-interest entity belongs provides the non-audit services referred to in paragraph 21 of this Article, to an undertaking incorporated in a third country which is controlled by the audited public-interest entity subject to assurance of sustainability reporting, the statutory auditor or the audit firm concerned shall assess whether his, her or its independence would be compromised by such provision of services by the member of the network.

If his, her or its independence is affected, the statutory auditor or the audit firm shall apply safeguards where applicable in order to mitigate the threats caused by such provision of services in a third country. The statutory auditor or the audit firm may continue to carry out the assurance engagements of sustainability reporting of the public-interest entity only if he, she or it can justify, in accordance with Article 22b of Directive 2006/43/EC, that such provision of services does not affect his, her or its professional judgement and the assurance report.’;

(3) in Article 14, point (aa) is inserted:

‘(aa) revenues from the assurance of sustainability reporting;’;

